



State of Utah

Department of
Environmental Quality

Dianne R. Nielson, Ph.D.
Executive Director

DIVISION OF SOLID AND
HAZARDOUS WASTE
Dennis R. Downs
Director

JON M. HUNTSMAN, JR.
Governor

GARY HERBERT
Lieutenant Governor

June 28, 2006

Tye K. Rogers, Vice President
Compliance and Permitting
EnergySolutions, LLC
605 North 5600 West
Salt Lake City, Utah 84116

Subject: Proposed Stipulation and Consent Order

Dear Mr. Rogers:

Enclosed please find a copy of the proposed STIPULATION AND CONSENT ORDER No. 0602011 (SCO) and penalty calculation worksheets that will be available for public comment. The SCO resolves NOTICE OF VIOLATION No. 0601006 (NOV) issued to EnergySolutions on February 28, 2006. The public comment period is scheduled to run from July 6, 2006 to August 7, 2006. It is anticipated that it will be presented as an informational item at the July 13, 2006 Board meeting and an action item at the Board's meeting on September 14, 2006. Upon approval by the Board, it will be sent to EnergySolutions for signature. The time frames in the SCO will then become effective upon signature and dating by the Executive Secretary.

If you have any questions, please contact Mark Christensen at (801) 538-6170.

Sincerely,

ORIGINAL DOCUMENT SIGNED BY DENNIS R. DOWNS ON 6/28/06

Dennis R. Downs, Executive Secretary
Utah Solid and Hazardous Waste Control Board

DRD/MEC/tm

c: Myron Bateman, E.H.S., M.P.A., Health Officer, Tooele County Health Department
Eric Johnson, EPA Region VIII, ENF, RC

Enclosure

TN200600741

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BEFORE THE UTAH SOLID AND HAZARDOUS WASTE CONTROL BOARD

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In the Matter of:	:	<u>PROPOSED STIPULATION</u>
	:	<u>AND CONSENT ORDER</u>
EnergySolutions, LLC.	:	<u>No. 0602011</u>
UTD982598898	:	
	:	

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This proposed **STIPULATION AND CONSENT ORDER (CONSENT ORDER)** is issued by the UTAH SOLID AND HAZARDOUS WASTE CONTROL BOARD (the Board) pursuant to 19-6-101 of the Utah Solid and Hazardous Waste Act (the Act) and the Utah Code Annotated (1953, as amended).

JURISDICTION

The Board has jurisdiction over the subject matter of this CONSENT ORDER pursuant to 19-6-112 Utah Code Annotated (1953, as amended), and jurisdiction over EnergySolutions, LLC. EnergySolutions and the Board are the parties to this CONSENT ORDER.

FINDINGS

1. EnergySolutions, LLC is a Utah corporation licensed to conduct business in the State of Utah.
2. EnergySolutions is a "person" as defined in UCA 19-1-103(4) and is subject to all applicable provisions of the Utah Solid and Hazardous Waste Act, the Utah Administrative Code (Rules) and its Permit.
3. EnergySolutions (formerly Envirocare) operates a commercial mixed waste treatment, storage and disposal facility in Tooele County, Utah. Hazardous wastes that EnergySolutions is authorized to treat, store and dispose are identified in the facility's Part B Permit issued on November 30, 1990 (the Permit), on file with the Utah Department of Environmental Quality, Division of Solid and Hazardous Waste (the Division). The permit was reissued effective April 4, 2003.
4. EnergySolutions generates listed and characteristic hazardous waste as defined by R315-2 of the Rules.
5. Authorized representatives of the Utah Solid and Hazardous Waste Control Board (the

inspectors) conducted compliance evaluation inspections at *EnergySolutions'* facility between October 1, 2004 and September 30, 2005.

6. The Executive Secretary of the Board issued NOTICE OF VIOLATION No. 0601006 (NOV) *EnergySolutions* on February 28, 2006 alleging violations by *EnergySolutions* of the Rules and the Permit based on findings documented during the above referenced inspections.
7. *EnergySolutions* filed responses to the NOV on March 27, 2006, and reserved its right for a hearing before the Board.

STIPULATION AND CONSENT ORDER

8. The parties now wish to fully resolve the NOV without further administrative or judicial proceedings. By entering into this CONSENT ORDER, *EnergySolutions* withdraws its request for a hearing.
9. As part of settlement for violation number 2 (placement of hazardous waste in the Class A Cell), *EnergySolutions* submitted documentation to the Executive Secretary demonstrating that the Class A Cell cover design meets the minimum technical requirements for a hazardous waste landfill cover under hazardous waste rules. *EnergySolutions* also submitted data from a fate and transport groundwater model to the Executive Secretary demonstrating that there is no long-term impact on groundwater by leaving the waste in the cell.
10. Based on *EnergySolutions'* submittals, the Executive Secretary has agreed with *EnergySolutions* determination that the Class A Cell cover design meets the minimum technical requirements for a hazardous waste landfill cover and that there should not be any long-term impact on groundwater. Therefore, *EnergySolutions* will not be required to remove the waste from the Class A Cell.
11. In full settlement of the violations alleged in NOV No. 0601006, *EnergySolutions* shall pay the sum of \$ 27,160.00 dollars to the Utah Department of Environmental Quality, c/o Dennis R. Downs, Executive Secretary, Utah Solid and Hazardous Waste Control Board, Utah Department of Environmental Quality, Division of Solid and Hazardous Waste, State of Utah, Salt Lake City, Utah 84114-4880. This amount has been determined in accordance with the Board's Civil Penalty Policy (R315-102 of the Rules), which considers such factors as the gravity of the violation(s), the extent of deviation from the rules, the potential for harm to human health and the environment, good faith efforts to comply, and other factors. Full payment shall be made within 30 days of the effective date of this CONSENT ORDER.

EFFECT OF CONSENT ORDER

12. For the purpose of this CONSENT ORDER, the parties agree and stipulate to the above stated facts. The stipulations contained herein are for the purposes of settlement and shall not

be considered admissions by any party and shall not be used by any person related or unrelated to this CONSENT ORDER for purposes other than determining the basis of this CONSENT ORDER. Nothing contained herein shall be deemed to constitute a waiver by the State of its right to initiate enforcement action, including civil penalties, against *EnergySolutions* in the event of future non-compliance with this CONSENT ORDER, with the Act, with the Rules, or with the Permit, nor shall the State be precluded in any way from taking appropriate action should such a situation arise at *EnergySolutions*' facility. However, entry into this CONSENT ORDER shall relieve *EnergySolutions* of all liability for violations alleged in NOV No. 0601006.

EFFECTIVE DATE

13. This CONSENT ORDER shall become effective upon execution by *EnergySolutions* and the Executive Secretary of the Board.

Dated this ____ day of _____, 2006

EnergySolutions, LLC.

Utah Solid and Hazardous Waste Control Board

Tye Rogers, Vice President

Dennis R. Downs, Executive Secretary

**NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER**

NOV # 0601006

violation number 1

violation description NON- LDR Waste Disposal in Landfill

1. Gravity Based Penalty

- a) Potential for Harm - **MODERATE** – Disposal of hazardous waste not meeting Land Disposal Restrictions has a potential to have an adverse affect on cell integrity. Contact from leachate from non-LDR waste can weaken the cell's geomembrane. Meeting LDR standards is an integral part of the hazardous waste program, and one of the fundamental determinations of whether a waste is allowed to be land disposed.
- b) Extent of Deviation - **MINOR** – *EnergySolutions* complies with this condition most of the time. Used mid range of the matrix Used old penalty policy. (\$1,600).
- c) Multiple/Multi-day – Not applicable

2. Adjustment Factors

- (a) Good faith – *EnergySolutions* self-identified and reported this violation (20% reduction. $\$1,600 - \$320 = \$1,280$).
- (b) Willfulness/Negligence – Not applicable
- (c) History of Compliance or Noncompliance – This issue has been raised in previous NOV letters. (20% increase. $\$1,280 + \$320 = \$1,600$).
- (d) Ability to pay – Not applicable
- (e) Other Unique Factors – Not applicable

3. Economic Benefit (not applicable)

4. Recalculation of Penalty based on New Information (not applicable)

TOTAL: \$1,600.00

**NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER**

NOV # 0601006

violation number 2

violation description Disposal in Landfill

1. Gravity Based Penalty

- a) Potential for Harm - **MINOR** - Placement of hazardous waste in a Class A landfill cell that was designed or constructed only for Class A waste has the potential for clay liner damage and groundwater contamination. It is minor because the volume of the waste that was placed in the cell was less than 55 gallons, and the constituents likely volatilized prior to placement. In addition, the constituents of concern were modeled at very high concentrations using a fate and transport model- the results demonstrating that migration to the water table at concentrations greater than the groundwater protection levels does not occur.
- b) Extent of Deviation - **MAJOR** - *EnergySolutions* does not have a permit to dispose of hazardous waste in the Class A landfill cell. One of the fundamental requirements of the hazardous waste program is that facilities obtain permits prior to disposing of mixed waste or hazardous waste on the land. Used mid range of the matrix (\$1,170).
- c) Multiple/Multi-day – *EnergySolutions* is unable to determine on which days the waste was actually disposed in the Class A landfill cell. Disposal could have occurred between October 15 and November 8, 2005 (24 days). But because the waste is still in the cell, the violation is ongoing. Therefore, a multi-day calculation is appropriate for 179 days. Used mid range of the multi-day matrix ($\$150 \times 179 = \$28,020$).

2. Adjustment Factors (not applicable)

- (a) Good faith – *EnergySolutions* self-identified and reported this violation. (20% reduction. $\$28,020 - \$5,604 = \$22,416$).
- (b) Willfulness/Negligence – Not applicable
- (c) History of Compliance or Noncompliance – Not applicable
- (d) Ability to pay – Not applicable
- (e) Other Unique Factors – Not applicable

3. Economic Benefit (not applicable)

4. Recalculation of Penalty based on New Information (not applicable)

TOTAL: \$23,586.00

**NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER**

NOV # 0601006

violation number 3

violation description Leachate Inspection

1. Gravity Based Penalty

- a) Potential for Harm - **MODERATE** – Liquid in the lowest sump causes pressure on the HDPE liner, which is not designed to hold liquid for extended periods of time. Liquid on the lower liner could be an indication of a leaking cell. If the sump is not inspected daily as required, it is not known if the cell has been compromised. The leachate collection pipes are required to be checked daily by personnel to ensure that no liquid has collected in the sump.
- b) Extent of Deviation - **MINOR** – This is the first documented instance of not checking the leachate levels in the sumps. Used mid range of the matrix (\$2,080).

2. Adjustment Factors (not applicable)

- (a) Good faith – *EnergySolutions* self-identified and reported this violation. (20% reduction. \$2,080 - \$416 = \$1,664).
- (b) Willfulness/Negligence – Not applicable
- (c) History of Compliance or Noncompliance – Not applicable
- (d) Ability to pay – Not applicable
- (e) Other Unique Factors – Not applicable

3. Economic Benefit (not applicable)

4. Recalculation of Penalty based on New Information (not applicable)

TOTAL: \$1,664.00

**NARRATIVE EXPLANATION TO SUPPORT
PENALTY AMOUNT FOR PROPOSED STIPULATION AND CONSENT ORDER**

NOV # 0601006

violation number 4

violation description Meter Calibration

1. Gravity Based Penalty

- a) Potential for Harm - **MINOR** – The 12.45 pH buffer solution is used for meter calibration, not for waste acceptance. *EnergySolutions* claims the meter was out of calibration for two incoming waste streams.
- b) Extent of Deviation - **MINOR** - While *EnergySolutions* generally calibrates its meters according to its permit, the meter was calibrated using expired pH buffer solutions. Used mid-point of the matrix (\$155).
- c) Multiple/Multi-day – Used a multiple factor of 2. Two waste streams were treated using the instrument calibrated with expired buffer solution ($\$155 \times 2 = \310).

2. Adjustment Factors (not applicable)

- (a) Good faith – Not applicable
- (b) Willfulness/Negligence – Not applicable
- (c) History of Compliance or Noncompliance – Not applicable
- (d) Ability to pay – Not applicable
- (e) Other Unique Factors – Not applicable

3. Economic Benefit (not applicable)

4. Recalculation of Penalty based on New Information (not applicable)

TOTAL: \$310.00